IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2876 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

KIRANBHAI RAMANLAL INAMDAR

Versus

ORIENTAL FIRE & GENERAL INSURANCE CO.LTD.

Appearance:

MR KOGJE FOR MR. CV PRAJAPATI for Petitioner

MR RR MARSHALL for Respondent No. 1

RULE SERVED BY DS for Respondent No. 2, 3, 4, 5

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 22/06/2000

ORAL JUDGEMENT

In this petition under Article 226/227 of the Constitution the petitioner has challenged the order dated 28.3.2000 passed by the Motor Accident Claims Tribunal, Vadodara, rejecting the petitioner's application for premature encashment of fixed deposit

receipt of Rs. 3 lakhs which was invested pursuant to the Tribunal's judgement and award dated 31.7.1999 in MACP No. 540 of 1987.

2. The petitioner suffered injuries and permanent disablement in a motor vehicular accident which took place on 15.2.1987. The petitioner was travelling in a maruti car from Surat to Vadodara. The truck in question caused accident resulting in injuries which ultimately led to partial permanent disablement of the petitioner. In the above mentioned claim petition, the Tribunal held that the owner and Insurance Company of the truck are liable to pay the petitioner a sum of Rs. 1,78,400/with interest at 12% per annum and also costs. Pursuant to the said award the Oriental Fire and General Insurance Company Ltd. deposited a sum of Rs.4,31,475/-. Out of the said amount, the petitioner was permitted to withdraw a sum of Rs. 1,29,025/- and Rs. 3 lakhs was invested in fixed deposit for a period of 5 years as per the Tribunal's order dated 2.11.1999 (Annexure-B) to the petition.

3. Thereafter, the petitioner filed an application dated 28.3.2000 (Annexure-D) praying that the petitioner may be permitted to encash the fixed deposit prematurely as the petitioner wanted to purchase a flat for his family since the petitioner is residing in rented premises. The petitioner possesses qualification of B.Com., LL.B. Earlier the petitioner was working in diamond industry and the petitioner is now working as a journalist and is also working on internet website. His application however came to be rejected by the Tribunal on the same day i.e. on 28.3.2000 with a cryptic observation that the fixed deposit cannot be permitted to be prematurely encashed for the purpose stated in the application. The petitioner therefore filed the present petition producing therewith a copy of the receipt dated 28.11.1999 issued by Prakash Aswani of Aswani Constructions to the effect that a sum of Rs. 90,000/was received against the total amount of Rs. 4,25,000/for flat No. A/2, Ashwamegh Apartment, City Light Road, Ghod Dod Road, Surat and that the possession of the flat would be handed over to the petitioner upon receiving balance amount of Rs. 3,35,000/-. It is pertinent to note that the fact that the petitioner has paid Rs. 90,000/- to the builder Aswani Constructions was also mentioned in the petitioner's application dated 28.3.2000 (Annexure-D).

4. In response to the rule issued by this court on 13.2.2000 Mr. Marshal appears for the Insurance Company

and states that he has no objection if the fixed deposit receipt is permitted to be prematurely encashed. This court therefore thought it fit to issue notice to Aswani Construction. Mr. Prakash Aswani, partner of Aswani Constructions appears and states and undertakes that Aswani Constructions has received Rs. 90,000/- from the petitioner and that as soon as cheque for Rs. 3,00,000/is received by Aswani Constructions, vacant and peaceful possession of flat No. A/2, Ashwamegh Apartment, City Light Road, Ghod Dod Road, Surat, shall immediately be handed over to the petitioner and the necessary documents will also be executed in favour of the petitioner after receiving the remaining amount of Rs. 35,000/- and that an undertaking to this effect in writing will also be filed within two weeks from today.

5. The petitioner is also present in the Court today and in response to a query from the Court he states that earlier the petitioner was working in diamond cutting industry but on account of permanent partial disablement he is not in a position to continue the same occupation and is now working as a journalist. He is 35 years of age. He requires the premises for his aged mother, his wife, two minor daughters and a minor son. The Court finds that the petitioner is an educated person who is able to lookafter his own interest and that since the money is going to be utilised for purchasing a residential accommodation, the amount received by him pursuant to the award of the Motor Accident Claims Tribunal is not likely to be frittered away. Hence there does not seem to be any impediment to permitting the petitioner to get premature encashment of the fixed deposit receipt of Rs. 3 lakhs with Union Bank of India.

6. Having heard the learned counsel for the petitioner and the learned counsel for the Insurance Co. and having examined the petitioner and Mr. Prakash Aswani, it is hereby directed that upon undertaking of Mr. Prakash Aswani of Aswani Constructions being filed before this Court as mentioned in para 4 above and a certified copy thereof being produced before the Motor Accident Claims Tribunal, Vadodara, the Tribunal shall instruct Union Bank of India to prematurely encash the fixed deposit receipt of Rs. 3 lakhs and to draw an account payee cheque in favour of Aswani Constructions. Upon receiving the cheque Aswani Constructions shall handover peaceful and vacant possession of flat No. A/2, Ashwamegh Apartment, City Light Road, Ghod Doad Road, Surat, to the petitioner and execute all the necessary documents in favour of the petitioner thereafter as and when the petitioner pays the remaining amount of Rs.

35,000/-. Rule is made absolute to the aforesaid extent. There shall be no order as to costs.

(M.S. SHAH, J)

(pkn)